

In the High Court of Judicature at Madras

Dated: 10.1.2007

Coram:

The Honourable Mr. Justice M.E.N. PATRUDU

Writ Petition Nos. 8616 and 17550 of 2004
and
W.P.M.P.Nos.20885 and W.V.M.P.No.1193 of 2004

Ananda Kathirone ... Petitioner in W.P.8616/2004

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai-104.

2. The Management of Addison &
Co., Ltd.,
803, Anna Salai,
Chennai-2.

... Respondents in W.P.8616/2004

The Management of
Addison & Co., Ltd.,
803, Anna Salai,
Chennai-2.

... Petitioner in W.P.17550 of 2004

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai-104.

2. Ananda Kathirone ... Respondents in W.P.17550/2004

The prayer in the Writ Petition No.8616 of 2004, filed under Article 226 of the Constitution of India is for the issuance of a Writ of Certiorarified Mandamus to call for the records of the award dated 15.12.2003 passed in I.D.No.62 of 1998 on the file of the first Respondent viz., The Principal Labour Court, Chennai, quash the un-allowed portion and modify the award to the effect that the petitioner is entitled to get the full back wages and other attendant benefits from the date of suspension i.e.20.5.1995, with interest at the rate of 12% p.a and also entitled for retirement benefits with all attendant benefits, petitionr is also entitled for damages/compensation of a reasonable amount, that may be fixed by this Court and to direct the second respondent management to pay all the above said amount within a reasonable period.

The prayer of the Management in the Writ Petition No.17750 of 2004 is for the issuance of writ of Certiorari to call for the records on the file of the 1st respondent Principal Labour Court, Chennai and to quash the impugned award dated 15.12.2003 made in I.D.No. 62/98.

Mr.Y.Bhuvanesh Kulmar.. For Petitioner in W.P.8616/2004
For 2nd Respondent in W.P.17550/2004

Mr.M.Vijayan for
M/s.King & Partridges.. For 2nd Respondent
in W.P.8616/2004
For Petitioner
in W.P.17550/2004

COMMON ORDER

The workman and the Management of Addison & Co., Ltd., are the parties in both the writ petitions. Hence common order is passed.

2. The Principal Labour Court, at Chennai passed an award in I.D.No.62 of 1998 and aggrieved by the same the workman as well as the Management preferred the writ petitions.

3. While disposing of the Industrial Dispute, the learned Presiding Officer of the Principal Labour Court held that the workman is the protected workman and the Management has no power to dismiss him from service. It is held that the evidence adduced by the witnesses on behalf of the Management during the Domestic enquiry is interested. Therefore the Labour Court held that the petitioner ought not to have been dismissed but he is not eligible for reinstatement as he is attained the age of superannuation but he is entitled for back-wages with all attendant benefits from the date of dismissal till the date of retirement.

4. The workman is contending that he is entitled for back-wages from the date of suspension and for the retirement benefits with all attendant benefits along with interest at 12% per annum from the date of superannuation till the date of realisation. Thus the prayer of the workman is to modify the award.

5. While so, the prayer of the Management is that the award itself is illegal and the entire award is to be quashed.

6. Briefly the facts are that there was a misconduct committed by the workman. Hence a charge memo dated 20.5.1995 was issued to him for which he has replied on 22.5.1995 and having not satisfied

with the contents of the reply, an enquiry was initiated and Mr.M.S.Parthasarathy was appointed as enquiry officer and the notice of enquiry was issued and the workman appeared before the enquiry officer and he wanted to change the enquiry officer, without even commencement of the enquiry by making baseless allegations. Since the workman is insisting the Management appointed Mr.S.A.Govindaraj, an outsider as the enquiry officer and the workman with the assistance of co-worker Mr.Balaji, attended the enquiry and the witnesses are examined on behalf of the Management and the workman cross-examined them and the workman also examined witnesses on his behalf and after completing the entire enquiry, the enquiry officer submitted his report on 14.10.1995 holding that the charges levelled against the workman are proved and the disciplinary authority after perusing the enquiry officer's report, concur with the same and issued show cause notice calling upon the workman as to why he should not be dismissed from service and after receiving the reply from the workman, an order of dismissal was issued.

7. After dismissing the workman the Management filed an application under Section 33(2)(b) of the Industrial Disputes Act, seeking approval of the dismissal of the workman and along with the dismissal order dated 2.2.1996 a cheque for Rs.4,569.05 was also enclosed. Thereafter a conciliation notice was issued on 9.9.1996, wherein it is stated that the conciliation proceedings would commence from 17.9.1996 by then the workman was already dismissed by order dated 2.2.1996. Thereafter, the Joint Commissioner of Labour has rejected the approval application holding that the Management ought to have filed a petition under Section 33(1)(b) but not under Section 32(2)(b). As against the said order the Management filed a writ petition in W.P.No.19257 of 1996 and the said writ petition was disposed of by this Court on 17.3.1997 and as against the said order the workman filed a writ appeal in W.A.No.474 of 1997 questioning the order of the Hon'ble single Judge in the writ petition and the Division Bench of this Court while disposing of the writ appeal directed the State Government to refer the dispute of termination of services of the workman to the Labour Court to decide the dispute within six months and accordingly the State Government has referred the dispute to the Principal Labour Court, Chennai through their G.O.D.No.105, Labour and Employment Department dated 18.2.1998 for adjudication.

8. The nature of reference is :

"whether the termination of Thiru.Ananda Kathirone with effect from 3.2.1996 by the Management of Addison & Co. Ltd., is legal and justified? If so, what relief he is entitled to?"

9. Thereafter the Labour Court adjudicated the matter in I.D.No.62 of 1998 and the claim statements and counter statements

were filed and the Management filed I.A.No.6 of 2001 seeking permission to let in evidence to prove the charges in the event of enquiry held to be vitiated. The Labour Court dismissed the said application on 30.8.2001 and thereafter examined the workman as W.W.1 and marked exhibits W1 to W8 and no witnesses were examined on behalf of the Management and exhibits M1 to M19 were marked. While so, the workman attained the age of superannuation therefore the Labour Court pronounced the impugned award granting back-wages from the date of dismissal till the date of retirement.

10. The main contention of the Management is that the Labour Court should decide the validity of the domestic enquiry before deciding the merits of the case and without doing so, the Labour Court has directly decided the main issue holding that the evidence before the domestic enquiry is interested.

11. It is contended that the workman is not a protected workman as he was not an office bearer of any recognised union. But the Court misread the evidence and gave the erroneous finding. It is stated that the order of the Labour Court is not sustainable.

12. The counsel for workman contended that the award is legal as far as reinstatement but the monetary benefits should be given from the date of suspension.

13. Heard the arguments of both sides. Perused the impugned award.

14. POINT:-

The point for determination is:
"Whether the award is legal."

15. Point:-

The reference is to decide whether the termination of the workman is legal and justified. The said reference is under Section 10(1)(c) of the Industrial Disputes Act, 1947. It is in pursuance of the direction given by the Division Bench of this Court. In the instant case the workman was dismissed from service after conducting the detailed domestic enquiry. There is no dispute about it. Section 14 of the Industrial Disputes Act says that Court shall enquire into the matter referred to it and report to the appropriate Government and it shall be published. Section 11(A) of the Act deals with powers of Labour Courts with regard to the disputes relating to the discharge or dismissal of the workman in the course of adjudication. Section 11 deals with procedure and powers of the Courts and the Tribunals.

16. A combined reading of the above provisions clarify that the Court has to examine the witnesses, verify the documents and material

objects and pronounce the award.

17. I have minutely perused the impugned award. The contents of the claim statement and counter statement are highlighted. The evidence of WW1 was also discussed. The details of exhibits W1 to W8 are noted. Exhibits M1 to M10 are the documents marked during the course of cross-examination of WW1. Admittedly the evidence of Management is not recorded and the documents are not marked through the witness on behalf of the Management.

18. A specific contention of the learned counsel for the Management is that they sought for examining the witness but the same has not been considered. The reasons are not known. While so, in the impugned award at para 13 and 14 there was discussion with regard to the domestic enquiry and finally at para 14 the Presiding Officer of the Labour Court observed that sufficient opportunity was given to the petitioner during the domestic enquiry. It is also observed in para 16 that exhibits W1 to W4 are not filed during the domestic enquiry and if they are genuine documents the workman would have produced those documents during the domestic enquiry. It is also further observed that the workman did not produce the originals of W1 to W4 and only copies are produced. It is also observed that the original minutes has not been produced before the Court and the workman did not offer any explanation. In para 17 the learned Judge of the Labour Court observed that the case of the Management has not been affected for non examination of the witnesses on the side of the management. Thereafter the Labour Court discussed the Section 31(b) and 32(b) of the Industrial Disputes Act. Having said so, the Court below observed that as per exhibit W5 the workman is a protected workman and W5 is dated 4.10.1995, whereas the petitioner was dismissed from service on 3.2.1996 and since the workman claims that he is a protected workman and as the workman was dismissed despite of the fact that he is a protected workman the Court held that the management has no right to dismiss the protected workman. The Court had relied on Rule 65(5) of the Tamil Nadu Industrial Disputes Rules 1958. Rule 65(5) speaks about the dispute between the employer and any registered Trade Union in respect of the matters connected with the recognition of protected workman under the said Rule then the dispute should be report to the Labour Officer concerned and the duty of the Labour Officer is to dealt with under the said Rule. The Labour Court relied on Ex.W5 stating that it is an order passed by the Labour Officer under Rule 65(5) and it is on 4.10.1995 and as the workman is a protected workman and as the order is effective for a period of six months the workman should not have been dismissed.

19. In the instant case the charge memo was issued to the workman on 20.5.1995 making allegations of misconduct and there was an enquiry and the workman participated in the enquiry. The workman challenged the allegations of misconduct and finally the enquiry

officer held that the charges are proved and the disciplinary authority accepted the same and the order of dismissal is issued on the basis of the enquiry report. This fact has strictly been omitted by the Labour Court. In para 24 it is observed that the management has to prove that the workman are interested workman to go on strike and the evidence on the side of the management during the domestic enquiry shows that they are interested witnesses. Therefore, the Court directed the management to let in oral evidence and the management made an endorsement that they do not have any oral evidence. Having said so the Court below passed an award in favour of the workman. Thus from the above it is clear that the Labour Court has clearly held that the domestic enquiry is not initiated and it has conducted enquiry properly on the witnesses examined during the domestic enquiry are interested witnesses. Therefore, gave the benefit to the workman.

20. In the recent judgment reported in Karnataka State Road Transport Corporation vs. Lakshmiddevamma [(2001)5 Supreme Court Cases 433) the Supreme Court had an occasion to go through the identical case. In that case the workman was dismissed after a domestic enquiry. There was a reference under Section 10 of the Industrial Disputes Act to the Labour Court to decide whether the dismissal is legal. In the above case it is held that 'if the domestic enquiry is found to be defective than an opportunity must be given to the management to adduce evidence'. In the instant case the Labour Court held that there is no defective in the domestic enquiry. However, the Labour Court went into the merits of the matter and gave a sweeping observation that the witnesses produced before the enquiry officer are interested. Therefore, he did not believe the evidence and it is also further held that since the workman is a protected workman he should not have been dismissed.

21. In the considered opinion of this Court, the Labour Court has committed a grave error in giving the above findings. The reasons are:

(i) The Labour Court is not expected to sit as an appellate Court on the enquiry report.

22. The common thread running through the decision of the Apex Court is that the Courts should not interfere with the administrative matters unless it was illogical or suffers from procedural impropriety. The scope of judicial review either by the Labour Court or by the High Court or by the Supreme Court is clarified by the Supreme Court. The Scope of judicial review is limited is defined and decision making process and not the decision. There is no scope for interference in the order of the disciplinary authority basing on the report of the enquiry officer unless the order of the disciplinary authority is based on no evidence, error of law and not

error of fact and such error is appeared on the face of the record. It is not for the Court to construe itself as an appellate Court over the orders of the disciplinary authority to resolve the action qualitatively different from ordinary civil dispute and re-adjudicate upon the question of fact decided by the authorities.

23. In the instant case the Labour Court held that there is no defective in the domestic enquiry and the management witnesses are examined in the enquiry. The Labour Court also came to the conclusion that the workman did not produce sufficient evidence before the enquiry officer. Having said so, the Labour Court is not justified in making a comment that the witnesses are interested witnesses. This Court is unable to find any basis to arrive at such conclusion by the Labour Court. Whatever is said in the said judgment with regard to the interference of the High Court when the orders of the High Court is applicable to this Court also and the jurisdiction under Article 226 of the Constitution of India that it is very wide but it should be exercised with great care and caution. Whenever the High Court notices that the findings of fact made through the impugned order is based on no evidence, then the same can be interfered. Only when the findings are perverse or the findings are given without any evidence, then only this Court can interfere.

24. In the instant case the observation of the Labour Court that the witnesses examined during the domestic enquiry are interested witnesses is without any basis or evidence.

25. The second reason for this Court to interfere with the findings of the Labour Court is that the observation of the Labour Court that the workman is a protected workman, therefore, he should not have been dismissed is totally perverse because it is applicable only when an employer sought for approval under Section 33 of the Act. In the instant case there is a reference under Section 10 of the Act. If this fact is ignored by the Labour Court, the order is liable to be set aside.

26. Learned counsel for the petitioner has cited number of decisions touching the provisions under Section 33 of the Industrial Disputes Act and in fact this is not a case attracting the above provisions. This is a case referred under Section 10 of the Act. In fact the Labour Court also came to a specific conclusion that the provisions of Section 33 of the Act do not apply. When reference has been made under Section 10 of the Act to decide the decision of dismissal which is based on the report of the enquiry officer, the Labour Court has to verify the facts and circumstances with regard to the evidence adduced before the enquiry officer and give its finding. Instead of doing so the Labour Court has travelled beyond its scope. Therefore, the award is liable to be set aside. Accordingly, the award is set aside. Writ Petition No.8616 of 2004 is dismissed. Writ

Petition No.17750 of 2004 is allowed. No costs. Consequently,
W.P.M.P.Nos.20885 and W.V.M.P.No.1193 of 2004 are closed.

gr.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

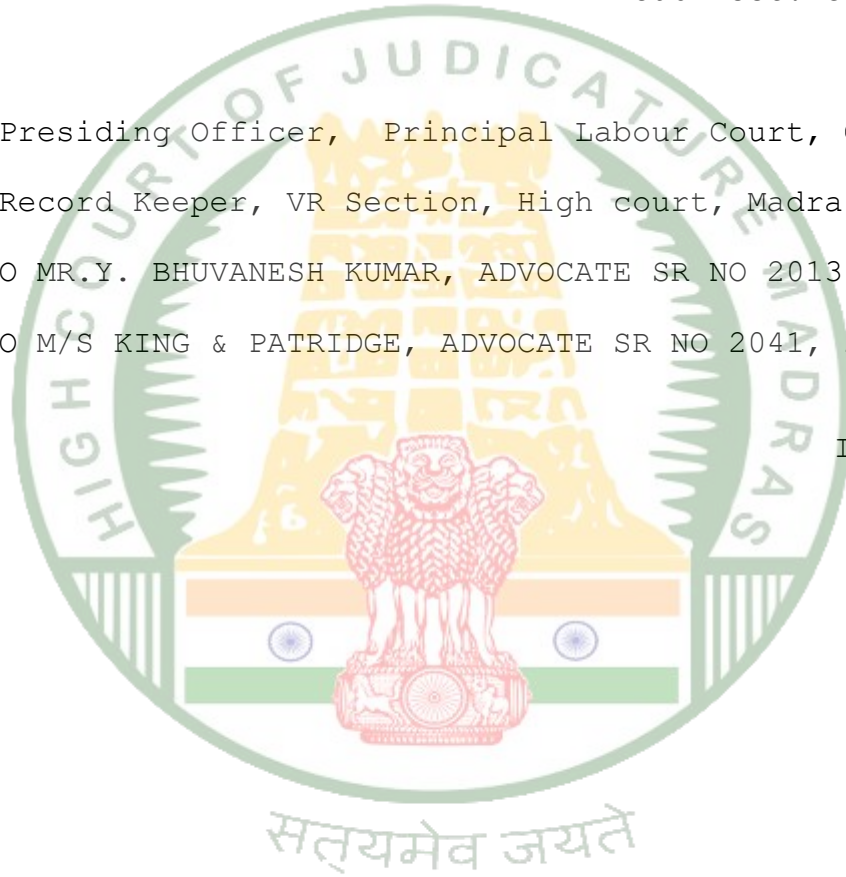
To

1. The Presiding Officer, Principal Labour Court, Chennai-104.
2. The Record Keeper, VR Section, High court, Madras-104.
- 2 CCS TO MR.Y. BHUVANESH KUMAR, ADVOCATE SR NO 2013, 2014
- 2 CCS TO M/S KING & PATRIDGE, ADVOCATE SR NO 2041, 2042

PRE DELIVERY ORDER
IN W.P.Nos.8616 and
17550 of 2004

RS (CO)

BP/13.2



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